

the House, accompanied with a bill for relief. This committee, concurring in said report, adopt the same as a part of their own, and herewith report a bill. The petitioner having deceased since the report first aforesaid, the present bill is drawn in favor of his legal representatives.

JUNE 27, 1834.

The Committee of Claims, to whom was referred the petition of Josias Thompson, report :

The petitioner states that he was appointed superintendent of the Cumberland road, between Brownsville and Wheeling, in the year 1816; that, in addition to the arduous duties of that office, he was subjected to the duty and responsibility of disbursing the public moneys as they became due to the contractors and others employed in constructing said road. He further states that a suit was commenced against him by the United States for a balance claimed on a settlement made at the Treasury Department, and that, on the trial thereof, the jury certified a balance in his favor. The petitioner prays for the passage of an act requiring the Treasury Department to pay him the amount so certified by the jury. He also asks allowance for such extra services as he performed, which were not strictly within the range of the duties of his office of superintendent, and such compensation for expenses necessarily incurred by him in the discharge of his official duties as has been made to other superintendents for similar services and expenses on the same road.

The petitioner was appointed superintendent on the 8th day of November, 1816, and was continued in said office till November, 1, 1819, a period of two years eleven months and twenty-three days, on a salary of \$2,500 per annum.

He stands charged on the books of the Treasury with the
sum of - - - - - \$775,440 39

And has received credit for the following sums, viz:

Amount paid contractors and other individuals
for work done on the Cumberland road - \$763,610 07

Amount paid to his assistants for their salaries,
at \$1,000 each per annum, viz:

J. C. Williams, from 8th November,
1816, to 7th November, 1817 - \$1,000

W. Hawkins, from 8th November,
1817, to August 8, 1819 - 1,750

T. Morte, from 7th July, 1817, to
6th July, 1818 - 1,000

3,750 00

Amount paid to Henry Sheffling, for thirteen
days' service in assisting the superintendent
in the examination and correction of mason-
work - - - - - 65 00

Amount paid to C. Hammond, fee as counsel
in a suit vs. Thompson, as superintendent 100 00

Amount paid to William Killen, for services and expenses of bringing Thompson's accounts to Washington - - -	\$159 00
Amount of Thompson's salary, from 8th November, 1816, to 1st November, 1819, at \$2,500 per annum - - -	7,458 87
	<u>\$775,142 94</u>
Balance due to the United States - - -	297 45
The petitioner, by his account filed, claims a balance due him of - - -	906 05
To which add the balance, as above, due the United States - - -	297 45
Making a difference between him and the Government of - - -	<u>1,203 50</u>

This difference consists of the following items charged by the petitioner, but not allowed at the Treasury Department, and which he claims as just and equitable, and as sanctioned by the admissions of the Government in other similar cases, viz:

Office-rent for three years, at \$100 per annum - - -	\$300 00
Fuel, candles, and stationery, for three years, at \$100 per annum - - -	300 00
Postage for three years - - -	100 00
	<u>\$700 00</u>
Amount charged by him for 17 days' work in preparing documents for the use of Messrs. Lacock, McGiffin, and Wilson, commissioners appointed by Government to examine and report on the work done on said road - - -	119 00
Amount paid William Killen for 229½ days' service, at \$1 50 per day, as clerk, between the 7th September, 1818, and 24th December, 1819, (overcharged 25 cents) - - -	344 50
Amount overpaid Joshua Foster, contractor on said road - - -	25 00
Amount paid Bartholomew Cosgrove, for assisting in the inspection of mason-work, (suspended for want of vouchers) - - -	15 00
Amount of difference, as above stated - - -	<u>\$1,203 50</u>

William Killen testifies that he was employed as chief clerk by the petitioner, during the greater part of the time specified in the above account; that the office was exclusively appropriated to the business of the United States, and consisted of three apartments; and he thinks the rent of \$100 a year but moderate and reasonable. He kept no account of the stationery used, but knows the quantity was considerable, and that the charge of \$100 by the year for it is reasonable, as well as that for the postage on the correspondence relating to the business of the road.

J. L. Skinner testifies that he was extensively concerned as a contractor on the Cumberland road, which was under the superintendence of the petitioner, and was almost constantly on the spot from April, 1817, until its completion in 1820; that Thompson's residence was not far from the centre of the deponent's contract, so that, besides his own business with him, he had an opportunity of knowing in what manner his time was em-

ployed. The whole length of the road under Thompson's care was near 69 miles, and the work during three years was constantly going on, until its completion, and consisted of a great variety of road and mason-work, and on which 1,000 or 2,000 hands were employed. The superintendent was required to watch all the operations from their inception, and especially the bridges scattered along the whole distance; to measure and remeasure, and make estimates and grant certificates, which required constant attention, and kept the superintendent in perpetual motion from one point of the road to another, and from one piece of work to another; that it was indispensable for him to keep an office and employ a clerk, who was stationary where the books, surveys, estimates, and engagements were to be found and made out; that, without such arrangements, it would have been impossible to transact business with the people employed, unless he had travelled with his books, vouchers, and papers. William Killen was an assistant, as also stationary clerk: he was a competent and diligent man, without whom, or some one of similar ability, the superintendent could not have kept along; and, with all the superintendent's activity and attention, and those of his assistants, the work was sometimes impeded for want of their attention at some one place while they were employed at another.

William Killen testifies, again, that he was employed as chief clerk by the petitioner, while superintendent of the road, in relation to the business of the same, at the rate of \$1 50 per day; having, also, as perquisites attached to the office, the use of a house for his family, a garden-spot, fuel, and fruit from an orchard, estimated at \$100 in value. He was also engaged as surveyor, to aid in correcting the location, and fixing the grades, at the rate of \$4 per day. He thinks the time so employed was about 28 days. He was also employed in admeasurements and calculations of road and mason-work, bearing his own expenses while from home: the amount of this time was 121 days. For the balance of the time he acted as chief clerk, excepting about 18 days employed in returning from Thompson's office to the Treasury Department, for which he charged at the rate of \$2 per day, bearing his own expenses. He was engaged as chief clerk 229½ days, and received from the superintendent the full amount of said services. He also states that, in the prosecution of his labors as clerk, he was obliged to labor constantly, (Sundays not excepted,) to enable him to keep up the business of the office; that he was employed in making out documents required by Messrs. Lacock, McGiffin, and Wilson, commissioners as aforesaid, preparatory to their examinations. He states that the extreme points of road under Thompson's superintendence were about 69 miles apart; the superintendence of which was more than three active and judicious men could properly perform. This deponent thinks there were about 150 contractors and others, who were constantly calling, with a view to relief in some way. He further states that, on this section of road, there was a great quantity of heavy mason-work which demanded an unusual share of the superintendent's time and attention, for admeasurements and examinations, to ascertain the amounts to which the contractors were entitled; and these contractors and sub contractors were constantly pressing on the petitioner, as the disburser of the public moneys for the work, and thus greatly increased the labors of the office.

He also states that Bartholomew Cosgrove was employed to aid in examining some defective mason-work; and that the sum of \$25, charged as

overpaid to Joshua Foster, was paid through mistake, and he thinks Thompson never again recovered it. It occurred by reason of a misstatement of one of the assistants.

John Feay, another witness, states that he lived about two miles from the office of the petitioner, and was a contractor; that he was almost daily near the office, which was a thoroughfare for the great number of contractors engaged on the road, and that no one man, however expert, could perform all the duties of that office; thinks it required the attention of three judicious, scientific men, to give the necessary care to the contractors for the road; that the amount paid to Killen was reasonable; that the rent of \$100 was moderate; and that the amount charged for fuel, candles, and stationery, was also reasonable.

Jacob Atkinson deposes that he was often at the office of Thompson in 1818 and 1819; that Killen was his chief clerk, and that he knew him to be an industrious man and a competent clerk. The business of the office was very great, and could not have been performed by one person. He had a contract on the road, and heard loud complaints that Thompson had so much labor on his hands as to prevent him from doing justice to the work or the contractors. The testimony of this witness confirms that of the abovenamed persons.

There is some difficulty in deciding on the merits of this claim, arising from a defect of evidence with regard to the contract between the Government and the said Thompson. Whatever that contract was, it existed under an appointment, by the President, of the claimant to the office of superintendent of the Cumberland road, the duties and responsibilities of which are not defined by any law known to the committee. It appears probable, however, from a view of acts passed by Congress authorizing the appointment of such officers or agents for other parts of the National road, that the petitioner must have been expected, in consideration of the salary allowed, to make all contracts for opening and making the road, to superintend all operations thereon, and receive and disburse, and account with the Treasury for, all moneys received under his appointment. But of this the committee have no positive knowledge. The petitioner's salary (\$2,500 per annum) seems to have been liberal; and if it was intended, at the time, that it should stand as a full compensation for all the services, expenses, and disbursements of the superintendent, under his appointment, without further recourse to the Government, in any event, the committee would say at once that he must abide by his contract. But such, they believe, was not the case; and they cannot perceive that the claimant was in fault for any uncertainty either in the terms or extent of the contract.

Such being the case, the committee are led carefully to examine the nature and character of the matters of claim preferred by the petitioner against the Government, and they are found to consist of services and payments connected with his official duties, though not falling fairly within the scope of them; that they were beneficial to the Government, and indispensable, from the situation in which he was placed. The Government has, in other similar cases, considered allowance for such services reasonable and just. The case of Daniel Shriver, also a superintendent of the Cumberland road, is analogous to the present. Shriver was in office eleven years, and for the last six received a salary of \$2,500. In his whole term of office, he disbursed about the same amount of moneys that

Thompson disbursed in three years. On the settlement of his accounts, the Government allowed him for certain extra expenses, of the precise character of those for which compensation is now claimed : among which are mentioned "office-rent, paper, books, stationery, disbursing moneys," &c. The cases are parallel ; or, if there be a difference, Thompson has the advantage in the comparison. The latter had a great extent of road under his care, and the evidence shows how great were his labors and expenses, accomplishing, it would seem, nearly as much in three years as Shriver in six. It may then be considered as implied in the contract with Thompson, that he should, on the adjustment of his accounts, receive compensation for the like charges ; and if it was equitable and just in one case, it must be so in the other.

The first item in the claimant's account is a charge for *office-rent* for three years, at \$100 per year. An office, it is apparent, from the nature of the duties to be rendered, was useful, not only as a matter of convenience, but for the security of the officer acting for the Government. It was essential to provide some place wherein to deposite and preserve the books, vouchers, contracts, plans, calculations, &c., necessary to such a public work, and to the disbursement of large sums of money. As a matter of convenience, too, for all parties concerned, it was desirable that some particular point should be established, where the agent of the Government could at all times be found. From the evidence offered, the committee consider this charge just and reasonable.

The second item is a general charge for *fuel, candles, and stationery*. No vouchers are produced to support it, and it is rejected.

The third charge is for postage. This the committee think inadmissible. The correspondence of the superintendent by mail, it is believed, must have been chiefly with the executive officers of the Government, and the contractors. In communicating with the former, he would be subjected to no postage ; and with the contractors, he had it in his power to arrange all accounts of postage. Besides, residing near the centre of the line of road, and often passing along its whole length, his correspondence with them could not have burdened him with a heavy charge for postage. This item is rejected.

The fourth charge is of \$119 for seventeen days' services in preparing papers and documents for the use of the commissioners appointed by Government to examine and report on the work done on the road. These services were rendered when his office had ceased. The committee think that the claimant has not shown himself entitled to this sum.

The fifth item amounts to \$344 50, (overcharged 25 cents,) and is for cash paid for the services of a clerk, 229½ days, at the rate of \$1 50 per day. The committee think the employment of a clerk was indispensable, and on this point will only refer to the evidence. His labors were extreme. The money in this behalf was usefully laid out for the Government, and the charge is allowed, deducting the 25 cents.

The sixth charge, for cash \$25 overpaid to Joshua Foster, is not allowed. An error of that amount occurred, as appears from Killen's testimony, in consequence of a misstatement of one of the assistants. A proper vigilance on the part of the claimant might have prevented the error. His remedy should be against Foster.

The seventh charge, not being supported by evidence, is rejected.

The committee remark, that, on a settlement of the petitioner's accounts at the Treasury, (the aforesaid claims having been rejected for want of authority to allow them,) a balance was found against him of \$297 45, on which a suit was instituted by the United States, in the district court for western Virginia, and the aforesaid claims were filed in offset. The jury found a verdict in his favor, and certified an amount to be due him greater than the aggregate of the sums herein allowed. The committee have deducted the sum so found against the petitioner on the books of the Treasury, from the amount of the aforesaid allowances; and for the balance, amounting to the sum of \$346 80, a bill is herewith reported.

The committee remark that on a settlement of the petitioner's accounts with the Treasury (the records claim having been rejected for want of authority to allow them) a balance was found against him of \$237.45 on which a writ was issued by the United States in the district court for the District of Columbia, and the records claim was filed in office. This writ was returned in his favor, and certified an amount to be paid him greater than the sum of the records claim. The committee have decided the records claim against the petitioner to the books of the Treasury, and the amount of the records claim, and for the balance, amounting to the sum of \$237.45, a bill is herewith reported.